



**STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES**

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COMMISSIONER

CERTIFIED MAIL RECEIPT # 70163010000073891312

July 31, 2017

Brenda Buckner, Owner
Apple Brook Academy
422 Hickory Top Road
Cleveland, Tennessee 37311

**RE: Notice of Serious Deficiency for the Child and Adult Care Food Program (CACFP)
Agreement Number 00-153 and Demand for Overpayment.**

Dear Ms. Buckner:

The Tennessee Department of Human Services (TDHS) Audit Services staff conducted an on-site unannounced monitoring review of the Child and Adult Care Food Program (CACFP) at Apple Brook Academy (Sponsor), Application Agreement 00-153, on May 31, 2017 and June 1, 2017. We reviewed the Sponsor's records of reimbursements and expenditures for April 2017. The purpose of this review was to determine if the Sponsor complied with the *Title 7 of the Code of Federal Regulations (CFR)* applicable parts, application agreement, and applicable Federal and State regulations.

SERIOUS DEFICIENCY DETERMINATION

Based on the monitoring review, the Department has determined that Apple Brook Academy is seriously deficient in its operation of the CACFP. In addition, the Department has identified Brenda Buckner, Owner as responsible for the serious deficiencies in light of his responsibility for the overall management of Apple Brook Academy's CACFP.

If Apple Brook Academy does not fully and permanently correct all of the serious deficiencies and submit documentation of the corrective action by the due date, the Department will:

- Propose to terminate Apple Brook Academy, agreement to participate in the CACFP;
- Propose to disqualify Apple Brook Academy from future CACFP participation; and

- Propose to disqualify Brenda Buckner, Owner from future CACFP participation.

In addition, if Apple Brook Academy voluntarily terminates its CACFP agreement after receiving this letter, the Department will propose to disqualify Apple Brook Academy and Brenda Buckner, owner from future CACFP participation. If disqualified, Apple Brook Academy and Brenda Buckner, owner will be placed on the National Disqualified List (“NDL”). While on the NDL, Apple Brook Academy will not be able to participate in the CACFP as an institution or facility. Brenda Buckner, owner will not be able to serve as a principal in any institution or facility or as a day care home provider in the CACFP.

Institutions and individuals remain on the NDL until the United States Department of Agriculture’s Food and Nutrition Service, in consultation with the Department, determines that the serious deficiencies have been corrected, or until seven years after their disqualification. However, if any debt relating to the serious deficiencies has not been repaid, they will remain on the list until the debt has been repaid.

The authorization for this action is found in Paragraph 1.e. of your FY 2016 CACFP Provider Agreement and in the CACFP regulations at 7 C.F.R. § 226.6(c)(3). You may not appeal a finding of serious deficiency.

SERIOUS DEFICIENCIES, ADDITIONAL FINDINGS AND REQUIRED CORRECTIVE ACTION

The following paragraphs detail each serious deficiency and additional finding:

Background

CACFP sponsors utilize meal count sheets to record the number of meals served for breakfast, lunch and supplement meals served. Meals served by participating sponsors must meet the minimum guidelines set by the United States Department of Agriculture (USDA) and TDHS to be eligible for reimbursement. The CACFP sponsor reports the number of meals served through the TDHS Tennessee Information Payment System (TIPS) to seek reimbursement. We inspected meal count sheets for our test period and reconciled the meals claimed to the meals reported as served for each meal service. We also assessed compliance with civil rights requirements.

In addition, we observed a meal service during our unannounced site visit on April 18, 2017.

Our review of the Sponsor’s records for April 2017 disclosed the following:

1. Management did not maintain a financial system as required by CACFP Program policies

Condition

The financial records of Apple Brook Academy were limited to bank statements and receipts from purchases. Revenue and expenses pertaining to the CACFP program are commingled with the financial transactions of the daycare and personal expenses. The bank account is not regularly reconciled. There was no chart of accounts or accounting system used that segregates expenses between CACFP-related expenses, daycare-related expenses, and other business or personal expenses.

The Tennessee Department of Human Services requires all organizations applying to be sponsors in the Child and Adult Care Food Program (CACFP) to complete the CACFP Viability, Capability and Accountability (VCA) Checklist. Section III of the VCA Checklist requires submission of documentation to demonstrate adequate management of financial operations and accountability for all program funds.

The 2016-2017 CACFP Management Plan submitted by Apple Brook Academy in the TIPS system included an affirmation at Section III.B that the institution’s operational policies address the

requirements of 7 CFR 226.6(b)(1)(xviii)(C)(2) requiring the institution to have a financial system with management controls specified in writing and written operational policies.

Criteria

Title 7 of the Code of Federal Regulations Section 226.6(b)(2)(vii)(C) Performance Standard 3—Program accountability states, “The renewing institution must have internal controls and other management systems in effect to ensure fiscal accountability and to ensure that the Program operates in accordance with the requirements of this part. To demonstrate Program accountability, the renewing institution must document that it meets the following criteria:

- (1) Governing board of directors. Has adequate oversight of the Program by an independent Governing board of directors as defined at §226.2;
- (2) Fiscal accountability. Has a financial system with management controls specified in writing. For sponsoring organizations, these written operational policies must assure:
 - (i) Fiscal integrity and accountability for all funds and property received, held, and disbursed;
 - (ii) The integrity and accountability of all expenses incurred;
 - (iii) That claims are processed accurately, and in a timely manner;
 - (iv) That funds and property are properly safeguarded and used, and expenses incurred, for Authorized Program purposes; and, (v) That a system of safeguards and controls is in place to prevent and detect improper financial activities by employees;
- (3) Recording keeping. Maintains appropriate records to document compliance with Program requirements, including budgets, accounting records, approved budget amendments, and, if a sponsoring organization, management plans and appropriate records on facility operations.”

FNS Instruction 796-2 Rev. 4. VIII.A. “Cost Principles” states, “Institutions are responsible for accounting for costs correctly and maintaining records and sufficient supporting documentation to demonstrate that costs claimed have been incurred, are allocable to the Program, and comply with State agency financial management requirements, this Instruction, and applicable Program regulations and policies. Costs that are not properly documented and recorded pursuant to U.S. GAAP, State agency financial management requirements, 7 CFR Part 226 and other applicable regulations, 2 CFR Part 225 or 2 CFR Part 230, as applicable, and this Instruction are unallowable.”

Recommendation

The Sponsor should ensure that an adequate financial management system is maintained.

2. **Management did not maintain adequate records to compute the cost of labor allocable to the CACFP program.**

Condition

The payroll records for Apple Brook Academy were not adequate to distinguish between time worked in the CACFP program and other Sponsor’s operations.

Criteria

FNS Instruction 796-2 Rev. 4, VIII.I.23.c.(3), “Time Distribution Reports,” states, “To establish the portion of costs that may be claimed for reimbursement or charged to the institution’s nonprofit food service account as Program labor, a daily log or other time distribution method must be used.

Recommendation

The Sponsor should implement procedures to accurately calculate the cost of labor used in the CACFP program.

3. An inventory of food and non-food items was not maintained.

Condition

The site director did not maintain a monthly inventory of food and non-food items purchased with CACFP funds.

Criteria

The Tennessee Child and Adult Care Food Program Policies and Procedures Manual states; that "agencies must complete an inventory of items purchased but not used at the end of the program year."

Recommendation

The Sponsor should ensure an inventory is completed at the end of each month and an end of year reconciliation is completed.

4. The Sponsor did not have written procurement plan or code of standards procedures

Condition

The Center did not have a procurement plan in writing regarding the purchase of equipment, supplies, or other goods and services.

Criteria

Title 7 of the Code of Federal Regulations Section 226.22 states, in part, "... agencies shall establish procurement procedures and a written code of standards of conduct...."

Recommendation

The Sponsor should establish and implement written procurement procedures and code of standards of conduct.

5. The receipts provided to verify food and non-food program expenditures were found to be invalid

This is a Serious Deficiency:

Condition

The sponsor provided a total of 12 receipts to support program expenditures for food and non-food items totaling \$1,882.20. We found these receipts to be questionable. The vendors named on the receipts included Wal-Mart in Cleveland, TN; Wal-Mart in Ooltewah, TN; Wal-Mart in Dalton, GA; Kroger in Cleveland, TN; and Sam's Club in Chattanooga, TN. We contacted the vendors to inquire as to whether the questionable receipts were produced by their point of service systems. None of the vendors listed were able to verify the validity of any of the receipts provided. Therefore, none of the receipts can be used to verify program expenses or food items served to program participants. As a result, all meals and supplements claimed for April 2016 must be disallowed.

| Receipt Date | Vendor Name, Location | Contact Person | Vendor Comments |
|--------------|----------------------------|-------------------|--|
| 04/07/2017 | Wal Mart, Ooltewah TN | Assistant Manager | Transaction actually occurred on 4/17/17; no milk purchased, miscellaneous other items not matching those listed. |
| 04/16/2017 | Wal Mart, Ooltewah TN | Assistant Manager | Transaction actually on 4/11/17; no milk purchased; one carton orange juice sole item on purchase. |
| 04/06/2017 | Wal Mart, Ooltewah TN | Assistant Manager | Transaction actually on 4/25/17; no milk purchased; other miscellaneous items not matching those listed. |
| 04/31/2017 | Wal Mart, Ooltewah TN | Assistant Manager | Transaction actually on 5/31/17; items listed match the actual purchase. |
| 04/07/2017 | Wal Mart, Cleveland TN | Accounting clerk | Transaction appears to be from register 15; that register did not run on 4/7/17 |
| 04/15/2017 | Wal Mart, Cleveland TN | Accounting clerk | Transaction number is "01385"; the transaction numbers at this register actually began in the 02500 series on 4/15 |
| 04/30/2017 | Wal Mart, Cleveland TN | Accounting clerk | Transaction number is "05268"; the transaction numbers at this register actually began in the 05800 series on 4/30. The register was not used on 4/29. |
| 04/12/2017 | Wal Mart, Dalton GA | Accounting Clerk | No such cashier number; transaction number is "02697"; transactions on 4/12/17 at this register began at 08040 |
| 04/29/2017 | Kroger, Cleveland TN | Accounting Clerk | Research onto register 7, as identified on the receipt, resulted in "not found on this register" |
| 04/30/2017 | Kroger, Cleveland TN | Accounting Clerk | Research into register 86, as identified on the receipt, resulted in "not found on this register" |
| 04/11/2017 | Sam's Club, Chattanooga TN | Manager | Transaction actually on 5/31/17; most items returned to the store for a refund on 6/1/17. |

| Date | Breakfast | | Lunch | | Supplement | | Reason |
|----------|-----------|------------|---------|------------|------------|------------|---|
| | Claimed | Disallowed | Claimed | Disallowed | Claimed | Disallowed | |
| 04/03/17 | 23 | 23 | 23 | 23 | 23 | 23 | No record of foods purchased to support menu claims |
| 04/04/17 | 24 | 24 | 24 | 24 | 24 | 24 | |
| 04/05/17 | 23 | 23 | 23 | 23 | 23 | 23 | |
| 04/06/17 | 22 | 22 | 22 | 22 | 22 | 22 | |
| 04/07/17 | 22 | 22 | 22 | 22 | 22 | 22 | |
| 04/10/17 | 21 | 21 | 21 | 21 | 21 | 21 | |
| 04/11/17 | 24 | 24 | 24 | 24 | 24 | 24 | |
| 04/12/17 | 24 | 24 | 24 | 24 | 24 | 24 | |
| 04/13/17 | 24 | 24 | 24 | 24 | 24 | 24 | |
| 04/17/17 | 23 | 23 | 23 | 23 | 23 | 23 | |
| 04/18/17 | 23 | 23 | 23 | 23 | 23 | 23 | |
| 04/19/17 | 24 | 23 | 24 | 23 | 24 | 23 | |
| 04/20/17 | 23 | 23 | 23 | 23 | 23 | 23 | |
| 04/21/17 | 24 | 24 | 24 | 24 | 24 | 24 | |
| 04/24/17 | 24 | 24 | 24 | 24 | 24 | 24 | |

| Date | Breakfast | | Lunch | | Supplement | | Reason |
|--------------|------------|------------|------------|------------|------------|------------|--------|
| | Claimed | Disallowed | Claimed | Disallowed | Claimed | Disallowed | |
| 04/25/17 | 24 | 24 | 24 | 24 | 24 | 24 | |
| 4/26/17 | 23 | 23 | 23 | 23 | 23 | 23 | |
| 4/27/17 | 24 | 24 | 24 | 24 | 24 | 24 | |
| 4/28/17 | 23 | 23 | 23 | 23 | 23 | 23 | |
| Total | 441 | 441 | 441 | 441 | 441 | 441 | |

Criteria

Title 7 of the Code of Federal Regulations Section 226.10(c) states, in part, "... In submitting a Claim for Reimbursement, each institution shall certify that the claim is correct and that records are available to support that claim. ..."

Title 7 of the Code of Federal Regulations Section 226.17(c) states, in part, "... Failure to maintain such records shall be grounds for the denial of reimbursement. ..."

Recommendation

The Sponsor should retain documentation of actual expenses incurred in providing the food program to support its claim for reimbursement. Food expenses should be reflected in the foods appearing on the menus and in recipes, and non-food costs should be reasonable as they relate to the business and its food program.

6. The Sponsor improperly classified the eligibility of CACFP participants

Condition

The Claim for Reimbursement for the test month reported 23 participants in the free category, 1 participant in the reduced-price category and 1 participant in the paid category. However, our review of the Sponsor's records verified there were 15 participants in the free category, 1 participant in the reduced-price category and 9 participants in the paid category.

The review of the applications on file disclosed the following:

- There were three participants that were classified as free on the application that did not have the last four digits of the parent's Social Security number on the application. These three participants were classified as paid.
- There was one participant that did not have the determining official's signature or date on the application. This participant was classified as paid.
- There were three participants whose applications were not classified. These three participants were classified as paid.
- There was one participant who was correctly classified as paid, but was reported as free.

Criteria

Title 7 of the Code of Federal Regulations Section 226.10(c) states, in part, "... In submitting a Claim for Reimbursement, each institution shall certify that the claim is correct and that records are available to support that claim. ..."

Recommendation

The Sponsor should ensure that applications are completed correctly, participants are classified in the correct category, and participants have valid applications on file for the claim period.

7. The Sponsor reported incorrect meal counts

Condition

Based on our review of available documents and information, we noted that the Sponsor reported incorrect meals counts on the Claim for Reimbursement form.

The Sponsor reported 442 breakfasts, 442 lunches and 442 supplements served. However, based on our review of the Sponsor’s records, we found that there were 441 breakfasts, 441 lunches and 441 supplements served, prior to any disallowances.

As a result, the Sponsor over reported one breakfast, one lunch, and one supplement.

Criteria

Title 7 of the Code of Federal Regulations Section 226.10(c) states, in part, “... In submitting a Claim for Reimbursement, each institution shall certify that the claim is correct and that records are available to support that claim. ...”

Recommendation

The Sponsor should implement internal controls to ensure meal counts are accurate and claims for reimbursement are correct.

8. The sponsor did not create and post in a conspicuous place an April menu as of the site visit conducted on April 18, 2017

This is a Serious Deficiency:

Condition

Based on our review of available documents, our observations during the site visit on April 18, 2017, and our conversation with Director at the time, no menu had yet been created for April. The most recent menu provided at that time was the one for the final week of March, 2017.

| Date | Breakfast | | Lunch | | Supplement | | Reason |
|----------|-----------|------------|---------|------------|------------|------------|---------|
| | Claimed | Disallowed | Claimed | Disallowed | Claimed | Disallowed | |
| 04/03/17 | 23 | 23 | 23 | 23 | 23 | 23 | No menu |
| 04/04/17 | 24 | 24 | 24 | 24 | 24 | 24 | No menu |
| 04/05/17 | 23 | 23 | 23 | 23 | 23 | 23 | No menu |
| 04/06/17 | 22 | 22 | 22 | 22 | 22 | 22 | No menu |
| 04/07/17 | 22 | 22 | 22 | 22 | 22 | 22 | No menu |
| 04/10/17 | 21 | 21 | 21 | 21 | 21 | 21 | No menu |
| 04/11/17 | 24 | 24 | 24 | 24 | 24 | 24 | No menu |
| 04/12/17 | 24 | 24 | 24 | 24 | 24 | 24 | No |

| | | | | | | | |
|----------|----|----|----|----|----|----|---------|
| | | | | | | | menu |
| 04/13/17 | 24 | 24 | 24 | 24 | 24 | 24 | No menu |
| 04/17/17 | 23 | 23 | 23 | 23 | 23 | 23 | No menu |
| 04/18/17 | 23 | 23 | 23 | 23 | 23 | 23 | No menu |

These meals were previously disallowed in Finding 1.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.15(e) states, "Each institution shall establish procedures to collect and maintain all program records required under this part, as well as any records required by the State agency. Failure to maintain such records shall be grounds for the denial of reimbursement for meals served during the period covered by the records in question and for the denial of reimbursement for costs associated with such records. At a minimum, the following records shall be collected and maintained: Copies of menus, and any other food service records required by the State agency."

Recommendation

The Sponsor should maintain and post the menus for the period of meals service.

9. There was no separate menu for the infant enrolled

Condition

There was one infant in care at the center during April 2017. The Sponsor did not have a separate menu showing the infant meal pattern was met. Based on attendance records and our observation on April 18, 2017, T.D. attended regularly, was present during the site visit, and was served the same meal as all other children. The meal observed consisted of one slice of white bread, one slice of bologna, a serving of mixed peas and carrots, a potato product triangle, and whole milk. This meal did not meet the meal pattern requirements for infants.

| Date | Breakfast Meals Claimed | Infant meals disallowed | Lunch Meals Claimed | Infant meals disallowed | Supplements claimed | Infant Meals disallowed |
|----------|-------------------------|-------------------------|---------------------|-------------------------|---------------------|-------------------------|
| 04/19/17 | 24 | 1 | 24 | 1 | 23 | 1 |
| 04/20/17 | 23 | 1 | 23 | 1 | 23 | 1 |
| 04/21/17 | 24 | 1 | 24 | 1 | 24 | 1 |
| 04/24/17 | 24 | 1 | 24 | 1 | 24 | 1 |
| 04/25/17 | 24 | 1 | 24 | 1 | 24 | 1 |
| 04/26/17 | 23 | 1 | 23 | 1 | 23 | 1 |
| 04/27/17 | 24 | 1 | 24 | 1 | 24 | 1 |
| 04/28/17 | 23 | 1 | 23 | 1 | 23 | 1 |

These meals were previously disallowed in Finding 1.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.20(b)(1) states, “Foods in reimbursable meals served to infants ages birth through 11 months must be of a texture and a consistency that are appropriate for the age and development of the infant being fed. Foods must also be served during a span of time consistent with the infant’s eating habits.”

7 CFR 226.20(b)(2) states, “Breastmilk or iron-fortified infant formula, or portions of both, must be served to infants birth through 11 months of age. An institution or facility must offer at least one type of iron-fortified infant formula. Meals containing breastmilk or iron-fortified infant formula supplied by the institution or facility, or by the parent or guardian, are eligible for reimbursement.”

For children six through 11 months old, Section 226.20(b)(4)(ii) states, “Breastmilk or iron-fortified formula, or portions of both, is required. Meals are reimbursable when institutions and facilities provide all the components in the meal pattern that the infant is developmentally ready to accept.

Section 226.20(b)(4)(ii)(A) states that at breakfast, lunch, or supper, “Six to 8 fluid ounces of breastmilk or iron-fortified infant formula, or portions of both; and 0 to 4 tablespoons of iron-fortified dry infant cereal, meat, fish, poultry, whole egg, cooked dry beans, or cooked dry peas; or 0 to 2 ounces (weight) of cheese; or 0 to 4 ounces (volume) of cottage cheese; or 0 to 8 ounces of yogurt; and 0 to 2 tablespoons of vegetable, fruit, or portions of both. Fruit juices and vegetable juices must not be served.”

Section 226.20(b)(4)(ii)(B) requires for a reimbursable snack, “Two to 4 fluid ounces of breastmilk or iron-fortified infant formula; and 0 to ½ slice bread; or 0-2 crackers; or 0-4 tablespoons infant cereal or ready-to-eat cereals; and 0 to 2 tablespoons of vegetable or fruit, or portions of both. Fruit juices and vegetable juices must not be served. A serving of grains must be whole grain-rich, enriched meal, or enriched flour.”

As a result, all infant meals and supplements served on April 19, 2017 and later were disallowed, for a total of eight breakfasts, eight lunches, and eight snacks.

These meals were previously disallowed in Finding 1.

Recommendation

The Sponsor must establish individualized menus for infants in the Sponsor’s care, and must ensure that infant menus follow USDA requirements.

10. The Sponsor did not provide evidence to support that enough milk for meals was served for the review period

This is a Serious Deficiency:

Condition

The Sponsor failed to provide any valid documentation of milk purchases for or during April, 2017. All milk receipts provided were determined invalid by the vendors noted on the receipts. Although participants were observed drinking milk during the visit on April 18, 2017, the sponsor provided no credible documentation of the type of milk served to participants for that meal.

| Table 5: Meals Disallowed for Missing Milk Purchase Documentation | | | | | |
|--|------------------|-------------------|----------------|-------------------|------------------------------------|
| Date | Breakfast | | Lunch | | Reason |
| | Claimed | Disallowed | Claimed | Disallowed | |
| 04/03/17 | 23 | 23 | 23 | 23 | No receipts to support menu claims |
| 04/04/17 | 24 | 24 | 24 | 24 | |

| | | | | |
|----------|----|----|----|----|
| 04/05/17 | 23 | 23 | 23 | 23 |
| 04/06/17 | 22 | 22 | 22 | 22 |
| 04/07/17 | 22 | 22 | 22 | 22 |
| 04/10/17 | 21 | 21 | 21 | 21 |
| 04/11/17 | 24 | 24 | 24 | 24 |
| 04/12/17 | 24 | 24 | 24 | 24 |
| 04/13/17 | 24 | 24 | 24 | 24 |
| 04/17/17 | 23 | 23 | 23 | 23 |
| 04/18/17 | 23 | 23 | 23 | 23 |
| 04/19/17 | 24 | 23 | 24 | 23 |
| 04/20/17 | 23 | 23 | 23 | 23 |
| 04/21/17 | 24 | 24 | 24 | 24 |
| 04/24/17 | 24 | 24 | 24 | 24 |
| 04/25/17 | 24 | 24 | 24 | 24 |
| 4/26/17 | 23 | 23 | 23 | 23 |
| 4/27/17 | 24 | 24 | 24 | 24 |
| 4/28/17 | 23 | 23 | 23 | 23 |

These meals were previously disallowed in Finding 1.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.20(a) states, “Except as otherwise provided in this section, each meal served in the Program must contain, at a minimum, the indicated food components:

- (1) *Fluid milk*. Fluid milk must be served as a beverage or on cereal, or a combination of both, as follows:
 - (i) *Children 1 year old*. Children one year of age must be served unflavored whole milk.
 - (ii) *Children 2 through 5 years old*. Children two through five years old must be served either unflavored low-fat (1 percent) or unflavored fat-free (skim) milk.”

Section 226.20(c) states that for each child at breakfast and lunch, the following quantities of milk are to be served: “Ages 1-2: 4 fluid ounces. Ages 3-5: 6 fluid ounces.”

Recommendation

The Sponsor must purchase sufficient quantities of milk so that each child receives the appropriate portion of fresh milk when meals require milk, should purchase milk at intervals and quantities to ensure that it stays fresh, and the sponsor must maintain credible records of milk purchases to seek reimbursement from the Program.

11. Menus did not meet USDA component requirements

Condition

The menu notes several processed meat products and frozen foods. The Sponsor was unable to provide Child Nutrition (CN) labels or manufacturer product formulation statements when requested, package “Nutrition Information” labels were provided for hot dogs, chicken nuggets, and bologna.

| Date | Meal | Number | Reason for disallowance |
|---------------|-------|--------|--|
| April 3, 2017 | Lunch | 23 | Hot dog served as insufficient meat / meat alternative component |
| April 4, | Lunch | 24 | Chicken nuggets served as insufficient meat / meat |

| | | | |
|--------------------------------|------------|---------------------|---|
| 2017 | | | alternative component |
| April 7, 2017 | Lunch | 22 | Bologna sandwich served as insufficient meat / meat alternative component |
| April 10, 2017 | Lunch | 21 | Chicken nuggets served as insufficient meat / meat alternative component |
| April 18, 2017 | Lunch | 23 | Chicken nuggets noted as insufficient meat / meat alternative component; but lunch observed showed substitution of bologna sandwich with insufficient meat / meat alternative |
| April 20, 2017 | Lunch | 23 | "Chicken rings" of unknown composition served as insufficient meat / meat alternative component |
| April 24, 2017 | Lunch | 24 | Chicken nuggets served as insufficient meat / meat alternative component |
| April 28, 2017 | Lunch | 23 | Hot dog served as insufficient meat / meat alternative component |
| April 28, 2017 | Supplement | 23 | Apple juice served; no second component served |
| Total meals disallowed: | | Lunches: 183 | Supplements: 23 |

These meals were previously disallowed in Finding 1.

Criteria

Title 7 of the Code of Federal Regulations 7 CFR, Section 226.20 states "each meal served must contain all required components." In addition, the Tennessee Child and Adult Care Food Program Policies and Procedures Manual states, "all meals must meet the meal patterns established by the USDA to be eligible for CACFP reimbursement." The USDA meal pattern requirements are on pages 27-32.

The USDA *Crediting Foods in the Child and Adult Care Food Program, Revised 2011*, pgs. 6, 21, and 62 states when crediting commercial or frozen products "toward the meat/meat alternate component, the amount of meat/meat alternate per serving (not the total portion size) is the determining factor for crediting purposes. Because of the uncertainty of the actual amount of meat/meat alternate contained in these products, they should not be used unless (1) they are CN-labeled; or (2) you obtain a Product Formulation Statement signed by an official of the manufacturer (not a sales person) that shows how the crediting has been determined."

Recommendation

Menus should be reviewed to ensure they reflect and contain all required meal components. CN labels or product formulation sheets should be kept on file for all commercially prepared or frozen foods.

12. The Sponsor did not maintain daily meal count records

This is a Serious Deficiency:

Condition

Daily meal count records for the review period were requested during the site visit on April 18, 2017. The Sponsor provided meal count records only for April 10, 2017.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.17(b)(9) states, "Each child care center must maintain daily records of time of service meal counts by type (breakfast, lunch, supper, and snacks) served to enrolled children, and to adults performing labor necessary to the food service.

Recommendation

The Sponsor should prepare meal count sheets for each classroom, for each meal and supplement, for each day. This process also should be included in staff meeting agendas and training topics frequently so it is less likely to be overlooked.

13. The Sponsor did not provide documentation for annual CACFP training

Condition

Annual CACFP training records were requested during the site review on May 31, 2017. The Sponsor was unable to produce any CACFP training records.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.17(b)(10) states, "Each child care center must require key staff, as defined by the State agency, to attend Program training prior to the center's participation in the Program, and at least annually thereafter, on content areas established by the State agency.."

Recommendation

The Sponsor should establish CACFP Program training, and require all staff to attend at least annually. Training participants should print and sign their name as well as the date on a training attendance roster to document their attendance.

Observation:

Health and safety issues were observed during our site visits

Condition

April 18, 2017 site visit:

The tables located outside the kitchen area had grimy smears on the surfaces, crumbs, and bits of food. We were told that these tables were not used for food service at the center. The tables were not cleaned at any time during the visit.

The area outside the kitchen area contained metal and plastic chairs stacked on one another to a high level. These stacks of chairs were not secured in any sort of container, nor were they secured with any other form of restraint. The towers of chairs could be a crushing hazard. Children were observed walking past the stacks of chairs to gain access to the restrooms.

May 31 site review:

The tables outside the kitchen were still not used for food service, but again these tables were smeared and had bits of food scattered on the top. They were not cleaned during this visit. The stacks of chairs were still present in the area near the restrooms.

June 1 site review:

The unclean tables outside the kitchen were again unclean. They were not cleaned at any time during the visit. The stacks of chairs were still present in the area near the restrooms.

A visit to the restroom revealed that two of four toilets were not in working order, all were unclean, and the restroom contained no toilet paper. The restroom contained a partial package of baby wipes and a partial roll of paper towels. There were no paper towels available at the hand washing sink outside the restroom.

Although meal service time is set at 11:15 a.m. on the program application, all children were on cots for naps when reviewers arrived at 11:00 a.m. Occasionally, a child would become restless or began to cry. The children were directed to stay on their mats and sleep. The participants were still on nap mats when reviewers left the building at 1:55 p.m.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.20(l) states, "Institutions and facilities must ensure that in storing, preparing, and serving food proper sanitation and health standards are met which conform with all applicable State and local laws and regulations."

The Tennessee *Licensure Rules For Child Care Centers*, Chapter 1240-04-03-.08(d) states, "Damaged or unsteady equipment shall be repaired or removed from the room or playground immediately."

The Tennessee *Licensure Rules For Child Care Centers*, Chapter 1240-04-03-.08(1)(e) states, "Equipment shall be kept clean by washing frequently with soap and water."

The Tennessee *Licensure Rules For Child Care Centers*, Chapter 1240-04-03-.08(4)(c) states, "No child shall be forced to stay on a cot or on a mat for an extended period of time."

Recommendation

The Sponsor must stay abreast of current CACFP and child care licensing regulations to avoid apparent or actual health and safety issues.

OVERPAYMENT-RIGHT TO APPEAL

Disallowed Meals Cost

Based on our review, we determined that the Sponsor's noncompliance with the applicable Federal and State regulations that govern the CACFP resulted in a total disallowed cost of \$2,518.78.

Remit a check payable to the *Tennessee Department of Human Services* in the amount of \$2,518.78, which the institution owes the Department. **The procedures for submitting an appeal regarding the amount of overpayment are enclosed. Please note that the appeal must be in writing and must be received by our Department no later than fifteen (15) calendar days from your receipt of this letter.** 7 C.F.R. § 226.6(k). The appeal must be submitted to:

Tennessee Department of Human Services
Appeals and Hearings Division, Clerk's Office
P.O. Box 198996
Nashville, TN 37219

If the Institution decides to appeal the amount of overpayment, all appeal procedures must be followed as failure to do so may result in the denial of your request for an appeal.

In accordance with the CACFP regulations at 7 C.F.R. § 226.14(a), in part, the State agency must assess interest 30 days from the initial request for repayment. For information about applied interest rates please visit the following website:

http://www.fiscal.treasury.gov/fsreports/rpt/cvfr/historical_rates.htm

SUMMARY

The Department has determined that Apple Brook Academy is seriously deficient in its operation of the CACFP and that Brenda Buckner, Owner is responsible for the serious deficiencies.

You may not appeal the serious deficiency determination itself. If the Department proposes to terminate Apple Brook Academy's CACFP agreement, or propose to disqualify Apple Brook Academy and the responsible individuals, you will be able to appeal those actions and you will be advised of your appeal rights and the appeal procedures at that time.

Apple Brook Academy may continue to participate in the CACFP during the corrective action period. The Department will pay any valid claims for reimbursement submitted by Apple Brook Academy for the corrective action period. As always, you must submit claims within sixty (60) calendar days of the last day of the month covered by the claim. The Department will deny any portion of a claim we determine is invalid. If the Department denies payment of any portion of a claim submitted for the corrective action period, that action would be appealable.

To provide for the full and permanent correction of the serious deficiencies and findings, please complete the following actions within fifteen (15) days of your receipt of this notice:

Apple Brook Academy must complete the following actions within 30 days from the date of this report:

1. Login to the Tennessee Information Payment System (TIPS) and revise the claim submitted for each site for March 2017, which contains the reconciled claim data from the enclosed exhibit.
2. Remit a check payable to the *Tennessee Department of Human Services* in the amount of \$2,518.78 for recovery of the amounts disallowed in this report. **Please return the attached billing notice with your check;** and
3. Prepare and submit a corrective action plan to address the deficiencies identified in this report. The corrective action plan template is attached. Please return the corrective action plan to:

AuditServices.CAPS.DHS@tn.gov

Allette Vayda, Director
Child and Adult Care Food Program
8th Floor Citizens Plaza Building
400 Deaderick Street
Nashville, Tennessee 37243

If the Department does not receive the corrective action plan by the deadline date, or the Department determines that the corrective action plan does not provide for the full and permanent correction of the serious deficiencies and findings, the Department will propose to terminate the Institution's CACFP Provider Agreement and to disqualify you and the Institution from future CACFP participation by issuing a Notice of Proposed Termination and Disqualification.

We appreciate the assistance provided during this review. If you have any questions regarding this report, please contact Jackie Yokley, Audit Director 2, at 615-837-5035 or Jackie.D.Yokley@tn.gov.

Sincerely,



Allette Vayda
Director, CACFP & SFSP

Enclosures

EXHIBIT

Verification of CACFP Independent Center Claim (Claiming Percentages)

Name of Agency: Apple Brook Academy
Review Month/Year: April 2017
Total Meal Reimbursement Received: \$2,518.78

| Site Meal Service Activity and Monitor Reconciliation | Reported on Claim | Reconciled Meals to Meal Counts Sheets |
|--|--------------------------|---|
| Number of Days that CACFP Food Service was operated | 19 | 19 |
| Total Attendance | 442 | 441 |
| Percentage of Participants in the Free or Reduced-price Category | XXXXXX | 64% |
| Number of Breakfasts Served | 442 | 0 |
| Number of Lunches Served | 442 | 0 |
| Number of Supplements Served | 442 | 0 |
| Number of Participants in Free Category | 23 | 15 |
| Number of Participants in Reduced-Price Category | 1 | 1 |
| Number of Participants in Paid Category | 1 | 9 |
| Total Number of Participants | 25 | 25 |
| Total Amount of Eligible Food Costs | XXXXXXXX | \$0.00 |
| Total Amount of Eligible Food and Non-Food Costs | XXXXXXXX | \$0.00 |



**STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES**

CITIZENS PLAZA BUILDING
400 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-1403

TELEPHONE: 615-532-4528 FAX: 615-741-4165
TTY: 1-800-270-1349
www.tn.gov/humanservices

BILL HASLAM
GOVERNOR

DANIELLE W. BARNES
COMMISSIONER

July 31, 2017

Brenda Buckner, Owner
Apple Brook Academy
422 Hickory Top Road
Cleveland, Tennessee 37311

Notice of payment due to findings disclosed in the monitoring report dated July 31, 2017, for Child and Adult Care Food Program (CACFP).

| | |
|----------------------|---|
| Institution Name: | Apple Brook Academy |
| Institution Address: | 422 Hickory Top Road Cleveland, Tennessee 37311 |
| Agreement Numbers: | 034770709009 |
| Amount Due: | \$2,518.78 |
| Due Date: | August 31, 2017 |

Based on the monitoring report issued on July 31, 2017, by the Audit Services Division within the Tennessee Department of Human Services, the Community and Social Services- Food Programs- CACFP & SFSP management has agreed with the findings which requires your institution to reimburse the Department of Human Services disallowed meals cost.

Please remit a check or money order payable to the **Tennessee Department of Human Services** in the amount of \$2,518.78 by the due date to:

**Fiscal Services 11th Floor
Citizens Plaza Building
400 Deaderick Street
Nashville, Tennessee 37243-1403
Tennessee Department of Human Services**

**CORRECTIVE ACTION PLAN
CHILD AND ADULT CARE FOOD PROGRAM (CACFP)
TENNESSEE DEPARTMENT OF HUMAN SERVICES (TDHS)**

Instructions: Please print in ink or type the information to complete this document. Enter the date of birth for each Responsible Principal and/or Individual in Section B. Attach the additional documentation requested. Enter your Date of Birth on the first page; enter your name, title and date of signature on the last page. Sign your name in ink. **Please return ALL pages of the completed Corrective Action Plan form.**

| | |
|---|---|
| Section A. Institution Information | |
| Name of Institution Apple Brook Academy | CACFP Agreement No. 00-153 |
| Mailing Address: 422 Hickory Top Road Cleveland TN, 37311 | |
| Section B. Responsible Principal(s) and/or Individual(s) | |
| Name and Title: Brenda Buckner, Owner | Date of Birth (s): |
| Section C. Dates of Issuance of Monitoring Report/Corrective Action Plan | |
| SD Report: July 31, 2017 | Corrective Action Plan: August 31, 2017 |
| Section D. Findings | |
| Findings: | |
| <ol style="list-style-type: none"> 1. Management did not maintain a financial system as required by CACFP Program policies 2. Management did not maintain adequate records to compute the cost of labor allocable to the CACFP program 3. An inventory of food and non-food items was not maintained 4. The Sponsor did not have written procurement plan or code of standards procedures 5. The receipts provided to verify food and non-food program expenditures were found to be invalid 6. The Sponsor improperly classified the eligibility of CACFP participants 7. The Sponsor reported incorrect meal counts 8. The sponsor did not create and post in a conspicuous place an April menu as of the site visit conducted on April 18, 2017 9. There was no separate menu for the infant enrolled | |

10. The Sponsor did not provide evidence to support that enough milk for meals was served for the review period
11. Menus did not meet USDA component requirements
12. The Sponsor did not maintain daily meal count records
13. The Sponsor did not provide documentation for annual CACFP training

The following measures will be completed within **15 business days** of my institution's receipt of this corrective action plan:

Measure No. 1: Management did not maintain a financial system as required by CACFP Program policies.

The finding will be fully and permanently corrected.

Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name: _____ Position Title: _____

Name: _____ Position Title: _____

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

Measure No.2: Management did not maintain adequate records to compute the cost of labor allocable to the CACFP program.

The finding will be fully and permanently corrected.

Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name: _____ Position Title: _____

Name: _____ Position Title: _____

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

Measure No. 3: An inventory of food and non-food items was not maintained

The finding will be fully and permanently corrected.

Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name: _____ Position Title: _____

Name: _____ Position Title: _____

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

Measure No. 4: The Sponsor did not have written procurement plan or code of standards procedures

The finding will be fully and permanently corrected.

Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name: _____ Position Title: _____

Name: _____ Position Title: _____

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

Measure No. 5: The receipts provided to verify food and non-food program expenditures were found to be invalid

The finding will be fully and permanently corrected.

Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name: _____ Position Title: _____

Name: _____ Position Title: _____

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

Measure No. 6: The Sponsor improperly classified the eligibility of CACFP participants

The finding will be fully and permanently corrected.
Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name: _____

Position Title: _____

Name: _____

Position Title: _____

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

Measure No. 7: The Sponsor reported incorrect meal counts

The finding will be fully and permanently corrected.
Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name: _____ Position Title: _____

Name: _____ Position Title: _____

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

Measure No. 8: The sponsor did not create and post in a conspicuous place an April menu as of the site visit conducted on April 18, 2017

The finding will be fully and permanently corrected.
Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name: _____ Position Title: _____

Name: _____ Position Title: _____

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

Measure No. 9: There was no separate menu for the infant enrolled

The finding will be fully and permanently corrected.
Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name: _____

Position Title: _____

Name: _____

Position Title: _____

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

Measure No. 10: The Sponsor did not provide evidence to support that enough milk for meals was served for the review period

The finding will be fully and permanently corrected.
Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name: _____ Position Title: _____

Name: _____ Position Title: _____

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

Measure No. 11: Menus did not meet USDA component requirements

The finding will be fully and permanently corrected.

Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name: _____ Position Title: _____

Name: _____ Position Title: _____

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

Measure No. 12: The Sponsor did not maintain daily meal count recordsThe finding will be fully and permanently corrected.

Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name: _____ Position Title: _____

Name: _____ Position Title: _____

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

Measure No. 13: The Sponsor did not provide documentation for annual CACFP training

The finding will be fully and permanently corrected.

Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name: _____

Position Title: _____

Name: _____

Position Title: _____

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

I certify by my signature below that I am authorized by the institution to sign this document. As an authorized representative of the institution, I fully understand the corrective measures identified above and agree to fully implement these measures within the required time frame.

Printed Name of Authorized Institution Official

Position

Signature of Authorized Institution Official

Date

Signature of Authorized TDHS Official

Date

APPEAL PROCEDURES FOR CHILD AND ADULT CARE INSTITUTIONS AND SPONSORING AGENCIES

Appeal Procedures

1. Pursuant to 7 CFR §226.6(k)(4), the TN Department of Human Services (TDHS) must provide administrative review procedures to institutions and responsible principals and responsible individuals as follows:

- (a) Annually to all institutions;
- (b) To an institution and to each responsible principal and responsible individual when the State agency takes any action subject to an administrative review as described in 7 CFR §226.6(k)(2); and
- (c) Any other time upon request.

2. Pursuant to 7 CFR 226.6(k)(3) and (k)(9), some administrative actions are not subject to administrative review. Those actions are listed in paragraph 2.(a). Other administrative actions may be administratively appealed. Those actions are listed in paragraph 2.(b) and (c). All institutions and sponsoring agencies may appeal any adverse administrative action listed in paragraph 2.(b) which are taken by the TDHS by requesting a fair hearing to appear in person to refute the action, or by requesting a review of written information in lieu of a fair hearing.

(a) Pursuant to 7 CFR Part 226.6 (k)(3) TDHS is prohibited from offering administrative reviews of the following actions:

- (i) FNS decisions on claim deadline exceptions and requests for upward adjustments to a claim.
- (ii) Determination of serious deficiency.
- (iii) State agency determination that corrective action is inadequate.
- (iv) Disqualification and placement on State agency list and National disqualified list.
- (v) Termination.
- (vi) State agency or FNS decision regarding removal from the National disqualified list.
- (vii) State agency's refusal to consider an application submitted by an institution or facility on the National disqualified list.

(b) Pursuant to 7 CFR Part 226.6(k)(9), an abbreviated appeal process is available for the following actions. TDHS must limit the administrative review to a review of written submissions by the TDHS and institutions or sponsoring agencies concerning the accuracy of the State agency's determination if the application was denied, or the State agency proposes to terminate the institution's agreement because:

- (viii) The information submitted on the application was false;
- (ix) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the national disqualified list;
- (x) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program;

Appeal Procedures for Child and Adult Care Food Program-Institutions
Revised March 2017

- (xi) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity;

(c) Administrative review is also available if the State agency notifies the institution and responsible principal or responsible individual of the following actions: proposed disqualification of a responsible principal or responsible individual, denial of a budget, denial of a line item within a budget, downward adjustment of the amount approved in a budget, suspension of an institution's participation, denial of start-up or expansion funds, denial of a request for advanced payment, recovery of an advance in excess of a claim, denial of a claim for reimbursement (except for late submission), decision not to forward an exception request for payment of a late claim, overpayment demand, denial of a new or renewing institution's application for participation, denial of sponsored facility application, notice of proposed termination, claim denial, claim deadline exceptions and requests for upward adjustments to a claim, or any other action affecting an institutions participation or claim for payment.

3. All appeal requests must be presented in writing to the TDHS Division of Appeals and Hearings not later than 15 calendar days after the date the institution or sponsoring agency receives the notice of adverse administrative action.

4. The date of an institution's or sponsoring agency's receipt of a notice of suspension and/or proposed termination and disqualification will be governed by the federal regulation at 7 CFR Part 226.2. The notice must specify the action being proposed or taken and the basis for the action, and is considered to be received by the institution or day care home when it is delivered, sent by facsimile, or sent by email. If the notice is undeliverable, it is considered to be received by the institution, responsible principal or responsible individual, or day care home five days after being sent to the addressee's last known mailing address, facsimile number, or email address.

5. The TDHS Division of Appeals and Hearings will acknowledge the receipt of the appeal request within 10 calendar days of the receipt of the institution's or sponsoring agency's request for review. The written request for review should state if a fair hearing is requested or if a review of written information in lieu of a fair hearing is requested. If the appeal request from the institution or sponsoring agency does not specifically request a hearing, a review of written information in lieu of a hearing will occur. If a fair hearing is requested and the institution or sponsoring agency's representative fails to appear, the right to a personal appearance is waived.

6. If an institution or sponsoring agency does not request a fair hearing or a review of written information in lieu of the hearing within 15 calendar days from the date the institution or sponsoring agency receives a Notice of Proposed Termination, the TDHS will issue a letter advising the institution or sponsoring agency that it is terminated from the CACFP effective on the 16th calendar day following the institution's or sponsoring agency's receipt of the notice, and that the responsible principals and individuals of the institution or sponsoring agency are disqualified from participation.

7. To be considered for a fair hearing or for a review of written information in lieu of a fair

Appeal Procedures for Child and Adult Care Food Program-Institutions
Revised March 2017

hearing, all written documents must be submitted to the TDHS Division of Appeals and Hearings not later than 30 days after receipt of the notice of adverse administrative action.

8. The action of the TDHS must remain in effect during the administrative review. The effect of this requirement on particular actions by TDHS is as follows:

(i) *Overpayment demand.* During the period of the administrative review, TDHS is prohibited from taking action to collect or offset the overpayment. However TDHS must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns the TDHS's action.

(ii) *Recovery of advances.* During the administrative review, TDHS must continue its efforts to recover advances in excess of the claim for reimbursement for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.

(iii) *Program payments.* The availability of Program payments during an administrative review of the denial of a new institution's application, denial of a renewing institution's application, proposed termination of a participating institution's agreement, and suspension of an institution are addressed in paragraphs (c)(1)(iii)(D), (c)(2)(iii)(D), (c)(3)(iii)(D), (c)(5)(i)(D), and (c)(5)(ii)(E), respectively, of 7 CFR §226.6.

9. The institution or sponsoring agency must refute the charges contained in the notice during the fair hearing or in the written information that is provided in lieu of the hearing.

10. The institution and the responsible principals and responsible individuals may retain legal counsel, or may be represented by another person.

11. If a fair hearing is requested, the institution or sponsoring agency will be notified in writing of the time, date and place of the fair hearing at least 10 calendar days in advance.

12. Any information which supports an adverse administrative action taken by the TDHS shall be available to the institution or sponsoring agency for inspection from the date of the receipt of the request for a fair hearing or a review of written information in lieu of the hearing.

13. In accordance with 7 CFR Part 226.6 (k)(8), the TDHS Division of Appeals and Hearings must conduct the administrative review of the proposed disqualification of the responsible principals and responsible individuals as part of the administrative review of the application denial, proposed termination, and/or proposed disqualification of the institution with which the responsible principals or responsible individuals are associated. However, at the administrative review official's discretion, separate administrative reviews may be held if the institution does not request an administrative review or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.

14. The procedures contained in the Uniform Administrative Procedures Act found at TCA 4-5-301 et seq. shall be followed in rendering a decision on all appeals. The decision of the hearing officer is the final administrative determination to be afforded to the institution or sponsoring agency, and shall be rendered in a timely manner not to exceed 60 calendar days from the date of the receipt of the request for a fair hearing.

15. The processing limits for administrative appeals MUST be met. In the event a continuance is requested by a party, one continuance may be granted at the Hearing Official's discretion. This

Appeal Procedures for Child and Adult Care Food Program-Institutions
Revised March 2017

continuance shall not be for a period longer than ten (10) calendar days unless there are exceptional circumstances. Exceptional circumstances must be detailed in the order of continuance and the order must contain a date certain for the hearing, to be set as soon as possible. A report of pending CACFP desk review and fair hearing requests will be generated and reviewed daily by the Clerk's Office and the Legal Director for Appeals and Hearings who will monitor the dates for timeliness. In the event a decision has not been rendered within forty-five (45) calendar days of the date of receipt of the request for fair hearing or desk review, the Legal Director for Appeals and Hearings or their back-up shall notify the hearing official to take appropriate action.

16. All requests for a fair hearing or for a review of written information in lieu of a hearing must be submitted to:

**Tennessee Department of Human Services
Division of Appeals and Hearings
PO Box 198996, Clerk's Office
Nashville, TN 37219-8996
Fax: (615) 248-7013 or (866) 355-6136
E-mail: AppealsClerksOffice.DHS@tn.gov**

17. If a termination action is upheld by the hearing officer, the TDHS will issue a letter to the institution or sponsoring agency and its responsible principals and individuals advising that the termination and disqualification are effective on the date of the ruling issued by the hearing officer. The agency maintains searchable records of all administrative reviews and their dispositions for a period of five (5) years.

18. As required by 7 CFR Part 226.6 (c)(7), each disqualified institution, sponsoring agency, principal and individual will be placed on the National Disqualified List maintained by the U.S. Department of Agriculture (USDA). Once included on the National Disqualified List, an institution, sponsoring agency, principal and individual shall remain on the list until such time as the USDA, in consultation with the TDHS, determines that the serious deficiencies that led to their placement on the list have been corrected, or until seven years have elapsed since they were disqualified from participation. However, if the institution, sponsoring agency, principal or individual has failed to repay debts owed under the program, they will remain on the list until the debt has been paid.